LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
OCT 14 1964
JOHN F. DAVIS, CLERK

In the

SUPREME COURT OF THE UNITED STATES

October Term, 1964

No. 50

UNITED STATES OF AMERICA,
Petitioner,

v.

DANIEL ANDREW SEEGER.

BRIEF OF THE AMERICAN HUMANIST ASSOCIATION, AS *AMICUS CURIAE*

TOLBERT H. McCARROLL
Attorney for the
American Humanist Association,
Amicus Curiae,
Humanist House
Yellow Springs, Ohio

LESTER FOREST
PAUL BLANSHARD
Of Counsel

Court Index Press, Inc.—Law Printers—809 Walnut Street, Cincinnati, Ohio 45202

INDEX

		Page
Brief, *Amicus Curiae*, of the American Humanist Association		1
Consent of the Parties		1
Interest of the *Amicus*		2
Argument—		
Point I.	Individuals espousing non-theistic religious beliefs should be entitled to claim conscientious objection to war under the First and Fifth Amendments	4
Point II.	The right to claim conscientious objection to war should not be limited to the adherents of theistic and non-theistic religions	8
Conclusion		11

Table of Cases

Cantwell v. *Connecticut*, 310 U.S. 296 (1940) 5
Everson v. *Board of Education*, 330 U.S. 1 (1946) 5
Torcaso v. *Watkins*, 367 U.S. 488, 495 (1961) 4, 5, 9
United States v. *Seeger*, 326 F2d 846, 848 (2d Cir. 1964); 853 ..... 3, 4
Wieman v. *Updegraff*, 344 U.S. 183 (1952) 9
Zorach v. *Clauson*, 343 U.S. 306, 315 (1952) 10

Other Authorities

50 U.S.C. App. Section 456 (j) 7
Camus, *The Myth of Sisyphus* (1955) 2
Dewey, *Experience and Nature* (1925) 3

In the

SUPREME COURT OF THE UNITED STATES

October Term, 1964

No. 50

UNITED STATES OF AMERICA,
Petitioner,

v.

DANIEL ANDREW SEEGER.

On writ of *certiorari* to the United States Court of Appeals for the Second Circuit

---

BRIEF *AMICUS CURIAE* OF THE AMERICAN HUMANIST ASSOCIATION

CONSENT OF THE PARTIES

The Solicitor General has expressed his consent in writing for the filing of the proposed brief as has counsel for the defendant-respondent and these written consents are on file in the office of the clerk of this court.

INTEREST OF THE *AMICUS*

The American Humanist Association is an organization of individuals who believe that for man to realize his potential he must apply reason and the principles of science to the solution of his personal and social problems. Humanists cannot with integrity accept the traditional Judeo-Christian concept of a Supreme Being. The purpose of the American Humanist Association is to spread the significance of humanism and to service the needs of humanists. Accordingly, the Association is currently involved in the defense of freedom of thought, human rights, church-state relations, planned parenthood, funeral reform, United Nations activities, the maximum use of science for human welfare, social welfare, ethical problems and the ethical education of young people.

Members of the American Humanist Association come from many professions and academic disciplines. They involve themselves with the Association through committee work, the Association's publications, local discussion groups, conferences and research projects. The Association is one of almost thirty similar organizations throughout the world which have combined to form the International Humanist and Ethical Union.

Humanists believe that mankind has only itself to rely upon and only this life with which to be concerned. Therefore, humanists would agree with the philosopher, Albert Camus, that:

> If there is a sin against life, it consists perhaps, not so much in despairing of life as in hoping for another life and in eluding the implacable grandeur of this life (*The Myth of Sisyphus*).

This interest in improving our present life has led humanists to be concerned about world peace. Many

humanists, though by no means all, have reached the conclusion that any war and the participation in any armed conflict is morally unjustifiable. These humanists sincerely believe that no circumstance could justify harming the dignity and worth of any individual. This is at the center of many humanists' moral concern. These humanists thoroughly agree with Daniel Seeger's statement as quoted by the Court of Appeals.

> It is our moral responsibility, to search for a way to maintain the recognition of the dignity and worth of the individual, the faith in reason, freedom, and individuality, and the opportunity to improve life for which democracy stands . . . I cannot participate in actions which betray the cause of freedom and humanity. Experience with the past indicates that our armament policy will lead to war, and war, with its indiscriminate crushing of human personality, cannot preserve moral values . . . To resort to immoral means is not to preserve or vindicate moral values, but only to become collaborators in destroying all moral life among men. *United States* v. *Seeger*, 326 F2d 846, 848 (2d Cir. 1964).

The challenge to humanists was formulated by one of the founders of the American Humanist Association, John Dewey. This great educator and philosopher stated:

> Nothing but the best, the richest and fullest experience possible, is good enough for man (*Experience and Nature*).

Humanists accepting this principle cannot engage in the destruction or degradation of human life. Therefore, many of these individuals have conscientious objections to war.

This Association has filed briefs *amicus curiae* in other cases before this Court involving the separation of church and state.

ARGUMENT

I

Individuals Espousing Non-Theistic Religious Beliefs Should Be Entitled to Claim Conscientious Objection to War Under the First and Fifth Amendments.

In 1961 this Court very clearly announced the following principle:

> We repeat and again reaffirm that neither a State nor the Federal Government can constitutionally force a person "to profess a belief or disbelief in any religion," . . . neither can aid those religions based on the belief in the existence of God as against those religions founded on different beliefs. *Torcaso* v. *Watkins,* 367 U.S. 488, 495 (1961).

Moral sanctions can be just as powerful among adherents of religions not teaching a belief in a Supreme Being as among those who profess a belief in God. The Court below observed:

> . . . For many in today's "skeptical generation," just as for Daniel Seeger, the stern and moral voice of conscience occupies that hallowed place in the hearts and minds of men which was traditionally reserved for the commandments of God . . . When Daniel Seeger insists that he is obeying the dictates of his conscience or the imperatives of an absolute morality, it would seem impossible to say with assurance that he is not bowing to "external command" in virtually the same sense as is the objector who defers to the will of a supernatural power. *United States* v. *Seeger,* 326 F2d 846, 853 (2d Cir. 1964).

History has often been advanced by men who, after searching their consciences in accordance with their principles, have acted upon a moral decision. The Protestant

reformer, Martin Luther, said, "Here I stand." The Catholic lawyer, Thomas Moore, and the Jewish philosopher, Baruch Spinoza, maintained similar firm positions. In this country we would not think of denying a man the right to act in accordance with his religious views if those religious beliefs were based upon a belief in a Supreme Being. Failing to approve the same process if it is applied by a person who does not accept a belief in a Supreme Being is to deny to some the due process and equal protection of the law as guaranteed by the Fifth Amendment of the United States Constitution. If the government condoned the stand of conscience only when engaged in by an individual accepting a belief in a Supreme Being, then that particular religious belief is being aided by the Federal Government and the "establishment of religion" clause in the First Amendment is being violated. *Cantwell* v. *Connecticut*, 310 U.S. 296 (1940); *Everson* v. *Board of Education*, 330 U.S. 1 1946); *Torcaso* v. *Watkins, supra.*

Objection must be taken to the government's interpretation of the *Torcaso* case (Brief for the United States, p. 75). Nowhere in the *Torcaso* decision is there contained the erroneous statement that Buddhists, Taoists, Ethical Culturists, or humanists, "believe that man has definite obligations to a *force superior to himself*" (emphasis ours). Indeed, it is the study of man and his potentialities that leads humanists and others to their moral codes.

The government in its brief, has attempted to separate moral codes from religion.

> As a matter of logic and definition, conscience and religion cannot be equated for purposes of the First Amendment. Conscience means a sense of good and evil; religion means a system of faith and worship regarding "God, or a god." (p. 76)

Moral codes come either from reason or from revelation. But living in accordance with a moral code is the same process, regardless of the source of the code. If we are not to be concerned with conscience, then we must say to a Jehovah's Witness or a Quaker, "Your opposition to war comes from the teachings of your religion. But your decision to follow these religious teachings is merely a matter of conscience, simply a 'sense of good and evil' and should, therefore, be ignored."

But the government does not suggest making such a statement to those whose moral codes come from divine revelation. These codes fall within what the government terms the "religious traditions of the American people."

> In determining whom to assign to noncombatant national service because of conscientious opposition to participation in war in any form, Congress had strong reason to take into account the deepseated convictions of the American people. (p. 82)

It would appear that the government is suggesting that Congress should consider traditional religious views, but that it may ignore other views. A young man whose deep and sincere moral convictions make impossible his conscientious involvement with the armed services is to be told, "For the purposes of being drafted, you are part of the United States, but your moral code is not to be considered, because your government has only to consider moral codes derived from traditional religion."

Clearly, the government's reasoning would result in a preference for those Americans whose moral codes are based upon belief in a Supreme Being. That this is the government's position is obvious from its brief.

> The core of the exemption for conscientious objectors is the unwillingness of the Congress, speaking the true will of the American people, to punish as a criminal

> a man who refuses to perform military service in obedience to what he believes is the command of a God transmitted by divine revelation. (p. 35)

It is respectfully submitted that it should not be the business of government to judge the relative merits of the sources of moral codes and to favor those based upon belief in a Supreme Being over those coming from the "stern and moral voice" of reason and reflection.

Sometimes the fear is expressed that many who want to avoid the draft for reasons other than those dictated by morality and conscience will claim the status of conscientious objector. This should not affect the constitutional issue involved. There are provisions within the law for determining the sincerity of one claiming to be a conscientious objector. 50 U.S.C. App. Sec. 456 (j). The British appear not to have suffered in basing their exemptions solely on the applicant's sincerity of belief in opposing war in any form. It might likewise be observed that it would be simpler for a person wishing to avoid military service for such reasons to join one of the recognized theistic religions professing an objection to war. There has, however, been no evidence that this latter phenomenon has occurred.

The history of exemption from military service may be traced back to colonial times. It suffices here, however, to go no further than the Act of 1917. Congress then exempted regular or ordained ministers of religion, students in theological schools, and persons who belonged to a group which forbade participation in war, and whose own religious convictions were in accord with those of the group.

In 1940 Congress made a transition from exemption based upon group consideration to individual conviction, but a conviction that had to be based or grounded in "religious training and belief."

In 1948, Congress added a restrictive and narrowing construction to "religious training and belief" by requiring it to be related to a Supreme Being. Congress thereby set apart those who believed in a Supreme Being from those who did not accept such a belief. Congress went even further and distinguished between religion and philosophy, and between a religion as distinct from a personal moral code.

It has been argued that Congress could legitimately exempt from military service those who felt that they would be punished by a supernatural power if they took part in such a program. Some individuals object to fighting because of fear of divine reprisals. Others object to being personally required to assist in what they consider will be the destruction of the moral and perhaps physical existence of man. If the government favors one type of objection over the other, it is making a preference in favor of a particular religious opinion. Is it the function of government to determine that the fear of divine punishment is more significant than other forms of moral sanction? If it is, then the equal protection of the law is not being extended to cover the belief systems of those not accepting a belief in a Supreme Being and it would appear that the government is aiding theistic religions.

II

The Right to Claim Conscientious Objection to War Should Not Be Limited to The Adherents of Any Religions, Either Theistic or Non-Theistic.

"Religion" is a very difficult word to define. To some it means simply the duty between the created and the creator. To most people in this country it signifies an obedience to the commands of a supernatural Supreme Being. But "religion" can also mean any system of ideas

which gives perspective to life, the emotional involvement with a philosophical point of view, or simply the search for meaningful ethical standards.

Many who would technically come within the definition of a non-theistic religion as defined in *Torcaso* v. *Watkins, supra,* are unschooled in these philosophical distinctions and for one or another reason would not label themselves religious, even though that term would be legally, philosophically and anthropologically applicable to them. The Court below specifically did not concern itself with the non-religious conscientious objector. It interpreted Mr. Seeger's views as broadly religious rather than secular or merely philosophical. We believe that such an interpretation still leaves the avowed non-believer in comparative jeopardy, particularly when his view cannot be embraced within some recognized category or school of thought.

It is possible to conceive of a sincere person whose thoughts were not sufficiently crystallized to provide for the overall philosophical view which is defined as a non-theistic religion under *Torcaso* v. *Watkins, supra.* Not only did this Court in *Torcaso* v. *Watkins* announce that the government could not favor a theistic religion over a non-theistic religion, but it also declared:

> Neither the State nor the Federal Government can constitutionally pass laws nor impose requirements which aid all religions as against non-believers. (495)

If the government engaged in the practice of allowing adherents of theistic and non-theistic religions the privilege of acting in accordance with their conscience and of denying this right to "non-believers," certainly the government would be imposing requirements which aid all religions as against non-believers.

In *Wieman* v. *Updegraff,* 344 U.S. 183 (1952) this Court indicated that Congress could not make a law providing

that ". . . no Federal employee could attend mass." It would appear inconsistent to allow the government to recognize only the moral convictions of the adherents of theistic and non-theistic religions.

Our Constitution was based on democratic principles which themselves dictate a government free from any partiality in religion. If a religious bias finds its way into governmental practices, some Americans will inevitably be deprived of the democratic right to live their lives in accord with their own ideas. Those most likely to suffer the immediate deprivation of this basic right would be the "non-believers." In the end, however, all Americans would suffer from this important infringement upon the democratic principle. This thought was expressed by Mr. Justice Jackson in his dissenting opinion in *Zorach* v. *Clauson*, 343 U.S. 306, 315 (1952).

> The day that this country ceases to be free for irreligion, it will cease to be free for religion—except for the sect that can win political power . . . If we concede to the State power and wisdom to single out "duly constituted religious" bodies . . . It would be logical to also uphold the power and wisdom to choose the true faith among those "duly constituted."

A young man might well believe that his involvement with a military service would assist in the destruction of civilization. Such a sincere belief would raise the strongest type of moral and conscientious objection to war. We are told that we live in a powerful nation. It is hoped that our nation is powerful enough not to require that this young man ignore his conscience.

CONCLUSION

For The Reasons Stated It Is Respectfully Submitted That The Judgment Of The Court Below Should Be Affirmed But It Is Also Submitted That The Decision Of This Court Should Allow A Conscientious Objection To Be Claimed Not Only By The Adherents Of Theistic And Non-Theistic Religions But By The "Non-Believer" As Well.

TOLBERT H. MCCARROLL
Attorney for the
American Humanist Association,
Amicus Curiae,
Humanist House
Yellow Springs, Ohio

LESTER FOREST
PAUL BLANSHARD
Of Counsel